

Taylor IV, William - BALTO

From: Matos, Diana [D_MATOS@STBLAW.COM]
Sent: Tuesday, November 20, 2001 10:30 AM
To: robert.kelly@wellpoint.com; thomas.geiser@wellpoint.com; jay.smith@piperrudnick.com;
william.taylor@piperrudnick.com; john.picciotto@carefirst.com
Cc: Horowitz, Gary I
Subject: Note



2142503_1.RTF

Attached please find the revised Subordinated Note marked to show changes from the most recent draft.

Tom

<<2142503_1.RTF>>

THIS NOTE HAS NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY STATE SECURITIES LAW, AND THIS NOTE MAY NOT BE OFFERED, SOLD, TRANSFERRED OR OTHERWISE DISPOSED OF EXCEPT PURSUANT TO THE TERMS OF SECTION 3.3(B) HEREIN. IN ADDITION, ANY SALE, TRANSFER OR OTHER DISPOSITION OF THIS NOTE SHALL ONLY BE MADE PURSUANT TO (I) AN EFFECTIVE REGISTRATION STATEMENT OR (II) AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAW AND THE HOLDER DELIVERS TO THE COMPANY AN OPINION OF LEGAL COUNSEL THAT SUCH TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, SUCH REGISTRATION REQUIREMENTS.

WELLPOINT HEALTH NETWORKS INC.

SUBORDINATED NOTE DUE _____, 20__

\$ _____, 20__

WellPoint Health Networks Inc., a Delaware corporation (the "Company"), for value received hereby promises to pay to the holder hereof on _____, 20__ (the "Stated Maturity"), the principal sum of _____ dollars (\$ _____). The Company promises to pay interest on the outstanding principal amount of this Note at a rate equal to ____% (the "Interest Rate"). Interest on the Notes will accrue at the Interest Rate from the most recent date on which interest has been paid or, if no interest has been paid, from _____, 20__. The Company will pay interest semi-annually in arrears on each _____, and _____, commencing _____, 20__. Interest will be computed on the basis of a 360-day year of twelve 30-day months and, in the case of a partial month, the actual number of days elapsed. The Company shall pay interest on overdue principal and on overdue installments of interest from time to time on demand at a rate equal to ____% (the "Default Interest Rate") so long as such Default (as defined in Section 1.1 below) is continuing. This Note is one of the \$ _____ aggregate principal amount issued of ____% Subordinated Notes due _____, 20__, referred to herein as the Securities.

This Note shall also be subject to the following terms:

ARTICLE 1 DEFINITIONS

Section 1.1 Definitions

"Bankruptcy Law" means Title 11, United States Code, or any similar Federal or state law for the relief of debtors.

OCC 009684

"Default" means any event which is, or after notice or passage of time or both would be, an Event of Default.

"Designated Senior Indebtedness" means (i) any particular Senior Indebtedness in which the instrument creating or evidencing the same or the assumption or guarantee thereof (or related agreements or documents to which the Company is a party) expressly provides that such Senior Indebtedness shall be "Designated Senior Indebtedness" for purposes of this Note and the other Securities and (ii) any other Indebtedness of the Company designated by the Company as of the date hereof; *provided* that such instrument, agreement or other document may place limitations and conditions on the right of such Senior Indebtedness to exercise the rights of Designated Senior Indebtedness.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"Indebtedness" means, with respect to any Person, and without duplication, (a) all indebtedness, obligations and other liabilities (contingent or otherwise) of such Person for borrowed money (including obligations of the Company in respect of overdrafts, foreign exchange contracts, currency exchange agreements, interest rate protection agreements, and any loans or advances from banks, whether or not evidenced by notes or similar instruments) or evidenced by bonds, debentures, notes or similar instruments (whether or not the recourse of the lender is to the whole of the assets of such Person or to only a portion thereof), (b) all reimbursement obligations and other liabilities (contingent or otherwise) of such Person with respect to letters of credit, bank guarantees or bankers' acceptances, (c) all obligations and liabilities (contingent or otherwise) in respect of leases of such Person (i) required, in conformity with generally accepted accounting principles, to be accounted for as capitalized lease obligations on the balance sheet of such Person, or (ii) required, in conformity with generally accepted accounting principles, to be accounted for as an operating lease, *provided* either (A) such operating lease requires, at the end of the term thereof, that such Person make any payment other than accrued periodic rent in the event that such Person does not acquire the leased real property and related fixtures subject to such lease, or (B) such Person has an option to acquire the leased real property and related fixtures, whether such option is exercisable at any time or under specific circumstances, (d) all obligations of such Person (contingent or otherwise) with respect to an interest rate swap, cap or collar agreement or other similar instrument or agreement, (e) all direct or indirect guaranties or similar agreements by such Person in respect of, and obligations or liabilities (contingent or otherwise) of such Person to purchase or otherwise acquire or otherwise assure a creditor against loss in respect of, indebtedness, obligations or liabilities of another Person of the kind described in clauses (a) through (d), (f) any indebtedness or other obligations described in clauses (a) through (d) secured by any mortgage, pledge, lien or other encumbrance existing on property which is owned or held by such Person, regardless of whether the indebtedness or other obligation secured thereby shall have been assumed by such Person and (g) any and all deferrals, renewals, extensions and refundings of, or amendments, modifications or supplements to, any indebtedness, obligation or liability of the kind described in clauses (a) through (f).

"Note" means this Note, as amended or supplemented from time to time in accordance with the terms hereof.

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"Person" means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization, or government or any agency or political subdivision thereof.

"SEC" means the U.S. Securities and Exchange Commission.

"Securities" means this Note and all other notes with similar terms issued contemporaneously herewith as part of the \$___ aggregate principal amount issued of ___% Subordinated Notes due _____, 20___, together with all other notes accepted from time to time in substitution, renewal or replacement for all or any part thereof including pursuant to Section 3.3, which shall be treated as a single class of securities.

"Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations of the SEC promulgated thereunder.

"Senior Indebtedness" means the principal of, premium, if any, interest (including all interest accruing subsequent to the commencement of any bankruptcy or similar proceeding, whether or not a claim for post-petition interest is allowable as a claim in any such proceeding), rent and end of term payments payable on or in connection with, and, to the extent not included in the foregoing, all amounts payable as fees, costs, expenses, liquidated damages, indemnities, repurchase and other put obligations and other amounts to the extent accrued or due on or in connection with, Indebtedness of the Company, whether outstanding on the date of this Note or thereafter created, incurred, assumed, guaranteed or in effect guaranteed by the Company (including all deferrals, renewals, extensions or refundings of, or amendments, modifications or supplements to, the foregoing. Notwithstanding the foregoing, the term Senior Indebtedness shall not include (i) the \$260,000,000 principal amount of Zero Coupon Convertible Subordinated Debentures Due 2019 of the Company issued under an Indenture dated as of July 2, 1999 as such Indenture may be amended from time to time (with respect to which this Note and the other Securities shall be *pari passu*) (ii) Indebtedness evidenced by this Note or the other Securities (with respect to which this Note and the other Securities shall be *pari passu*), (iii) Indebtedness of the Company to any subsidiary of the Company, a majority of the voting stock of which is owned, directly or indirectly, by the Company, (iv) accounts payable or other indebtedness to trade creditors created or assumed by the Company in the ordinary course of business and (v) any particular Indebtedness in which the instrument creating or evidencing the same or the assumption or guarantee thereof expressly provides that such Indebtedness shall not be senior in right of payment to, or is *pari passu* with, or is subordinated or junior to, this Note and the other Securities.

ARTICLE 2 REDEMPTION

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Section 2.1 Right to Redeem.

This Note and the other Securities are redeemable in whole or in part, from time to time, at the option of the Company; *provided*, that a Note may be redeemed only in integral multiples

of \$1,000. Upon such redemption, the Company shall pay the holder the principal amount of this Note so redeemed plus accrued but unpaid interest on such principal amount.

Section 2.2 Notice of Redemption.

At least 20 days but not more than 60 days before any redemption of all or any portion of this Note, the Company shall mail a notice of redemption by first-class mail, postage prepaid, to the holder of this Note, setting forth the principal amount to be redeemed, the interest on such principal amount that will accrue and be unpaid prior to such redemption and the date for such redemption.

The notice, if mailed in the manner herein provided, shall be conclusively presumed to have been duly given, whether or not the holder receives such notice.

Section 2.3 Effect of Notice of Redemption.

Once notice of redemption is given, pursuant to Section 2.2, the principal amount of this Note so redeemed, plus accrued but unpaid interest thereon, shall become due and payable on the date for such redemption.

Section 2.4 Securities Redeemed in Part.

If less than all the Securities are to be redeemed, the Company shall select the Securities to be redeemed pro rata or by lot or by another fair and appropriate method; *provided*, that no Securities of a principal amount of \$1,000 or less shall be redeemed in part. The Company shall make the selection at least 25 days, but not more than 65 days, before the date selected for the redemption of outstanding Securities not previously called for redemption. If this Note is to be redeemed in part only, a Note in a principal amount equal to the unredeemed portion thereof will be issued in the name of the holder thereof in accordance with Section 3.3 hereof.

ARTICLE 3

ADDITIONAL COVENANTS

OCC 009687

Section 3.1 Financial Information: SEC Reports.

The Company will deliver to the holder of this Note (a) as soon as available and in any event within 90 days after the end of each fiscal year of the Company (i) a consolidated balance sheet of the Company and its subsidiaries as of the end of such fiscal year and the related consolidated statements of operations, stockholders' equity and cash flows for such fiscal year, all reported on by an independent public accountant of nationally recognized standing and (ii) a report containing a management's discussion and analysis of the financial condition and results of operations and a description of the business and properties of the Company and (b) as soon as available and in any event within 45 days after the end of each of the first three quarters of each fiscal year of the Company (i) an unaudited consolidated financial report for such quarter and (ii)

a report containing a management's discussion and analysis of the financial condition and results of operations of the Company; *provided* that the foregoing shall not be required for any fiscal year or quarter, as the case may be, with respect to which the Company delivers or expects to deliver to the holder an annual report or quarterly report, as the case may be, pursuant to the immediately following paragraph.

The Company shall deliver to the holder, within 15 days after it files such annual and quarterly reports, information, documents and other reports with the SEC, copies of its annual report and of the information, documents and other reports (or copies of such portions of any of the foregoing as the SEC may by rules and regulations prescribe) which the Company is required to file with the SEC pursuant to Section 13 or 15(d) of the Exchange Act.

Section 3.2 Officers' Certificates.

The Company shall deliver to the holder, within 120 days after the end of each fiscal year of the Company, an officers' certificate in which one of the two officers signing such certificate is either the principal executive officer, principal financial officer or principal accounting officer of the Company (an "Officers' Certificate"), stating whether or not to the knowledge of the signers thereof the Company is in Default in the performance and observance of any of the terms, provisions and conditions of this Note or any of the other Securities (without regard to any period of grace or requirement of notice provided hereunder) and, if the Company shall be in Default, specifying all such Defaults and the nature and status thereof of which the signers may have knowledge.

The Company will deliver to the holder, as soon as possible and in any event within five days, upon becoming aware of any Default in the performance or observance of any covenant, agreement or condition contained in this Note or any other Securities, or any Event of Default, an Officers' Certificate specifying with particularity such Default or Event of Default and further stating what action the Company has taken, is taking or proposes to take with respect thereto.

Section 3.3 Registration and Transfer.

(a) The Company will keep at its principal office a register in which the Company will provide for the registration of the Securities and their transfer. The Company may treat any Person in whose name this Note is registered on such register as the owner thereof for the purpose of receiving payment of the principal and redemption price of and interest on the Note and for all other purposes, whether or not the Note shall be overdue, and the Company shall not be affected by any notice to the contrary from any Person other than such Person. All references herein to a "holder" of this Note shall mean the Person in whose name the Note is at the time registered on such register.

(b) This Note shall not be sold, transferred or otherwise disposed of except in accordance with all of the following terms:

(i) the Company shall have consented to such sale, transfer or other disposition, which consent shall not be unreasonably withheld;

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